

A.G. Contract No.: KR04-1487TRN  
ECS File No.: JPA 04-098  
Project No.: HES-191-N(002)  
Project: Traffic Signals/Lighting Stage III  
Section: US 191B @ 10<sup>th</sup> Street  
TRACS No.: HX157 01C  
Budget Source Item No.: 72805

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF DOUGLAS

**THIS AGREEMENT** is entered into this date January 20, 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF DOUGLAS, acting by and through its MAYOR and CITY COUNCIL (the "City").

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State and the City desire to participate in the construction of a new warranted traffic signal, in addition to sidewalks, driveways, crosswalks, curbs and gutters located at US 191B and 10<sup>th</sup> Street, Milepost (MP) 0.75, at an estimated cost of \$184,520.00, hereinafter referred to as the "Project", for the safety and benefit of the traveling public. The State will design and construct the Project and the City will be responsible for payment of the electrical power costs for the operation of traffic signal and for the maintenance of the concrete sidewalks, driveways, crosswalks, curbing and gutter improvements, replaced or installed new.

4. The parties hereby agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to possible substantial change before project completion; b) The parties shall perform their responsibilities consistent with this Agreement; and c) Any change or modification to the Project will only occur with the mutual written consent of the parties.

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27330  
Filed with the Secretary of State  
Date Filed: 01/20/05  
Janice K. Brewer  
Secretary of State

By: William V. Greenwald

## **II. SCOPE OF WORK**

### **1. The State will:**

a. Prepare and provide to State standards design plans, specifications and other such documents and services required for construction bidding and construction of the Project, and submit to the City for concurrence.

b. Call for bids and award one or more construction contract(s) for the Project. Administer and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by Project delays or whatever reason attributable to the State.

c. Upon completion of the Project perform the final inspection and notify the City in writing that the Project has been constructed in accordance with the project documents and has been satisfactorily completed.

d. Upon completion and acceptance of the Project by the State, provide maintenance for the installed traffic signal equipment, all at the State's expense.

e. Not be obligated to maintain the concrete sidewalks, driveways, crosswalks, curbs and gutters should the Town fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

### **2. The City will:**

a. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.

b. In the event unforeseen conditions or circumstances increase the cost of said work necessitated by change in the Project's scope of work, such additional costs shall require prior approval of the State. All costs attributable to any engineering change orders requested by the City shall be the sole responsibility of the City for payment.

c. Be responsible for contractor claims for additional compensation caused by Project delays attributable to the City.

d. Upon completion, approval and acceptance of the Project by the State, provide payment of electrical energy costs to operate the traffic signal, all at the City's expense.

e. Upon completion, approval and acceptance of the Project, provide maintenance and all repairs to the concrete sidewalks, driveways, crosswalks, curbs and gutters replaced or installed new in conjunction with the Project, all at the their own expense.

## **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, any provisions for electrical power, provided by the City shall be perpetual. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the City fails to budget or provide for proper and perpetual electric power as set forth in this Agreement, the State shall in no way be obligated to maintain said Project.


2. This Agreement shall become effective upon filing with the Secretary of State.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
4. The provisions of Arizona Revised Statutes § 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the City will bear all costs associated therewith.
5. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".
6. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.
8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:
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| Arizona Department of Transportation<br>Joint Project Administration<br>205 S. 17 <sup>th</sup> Avenue – Mail Drop 616E<br>Phoenix, AZ 85007<br>(602) 712-7525 | City of Douglas<br>Attn: City Manager<br>425 10 <sup>th</sup> Street<br>Douglas, AZ 85607<br>(520) 364-1586 |
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9. Pursuant to Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF DOUGLAS**


By   
RAY BORANE  
Mayor

**STATE OF ARIZONA**

Department of Transportation

By   
MICHAEL MANTHEY, P.E.  
State Traffic Engineer

ATTEST:

By   
LETICIA G. RODRIGUEZ  
City Clerk

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|--|---|
9. Pursuant to Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

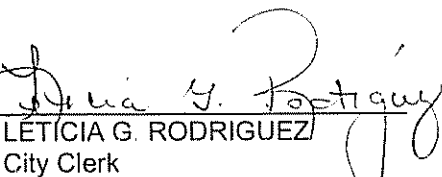
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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF DOUGLAS**

By   
RAY BORANE  
Mayor

ATTEST:

By   
LETICIA G. RODRIGUEZ  
City Clerk

**STATE OF ARIZONA**


Department of Transportation

By   
MICHAEL MANTHEY, P.E.  
State Traffic Engineer

APPROVAL OF THE CITY OF DOUGLAS

I have reviewed the above referenced proposed intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and CITY OF DOUGLAS and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 10<sup>th</sup> day of November, 2004

  
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City Attorney

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***WHEREAS***, the Arizona Department of Transportation and the City of Douglas seek to enter into an Intergovernmental Agreement for the design, construction and maintenance of a new warranted traffic signal, sidewalk, driveway and crosswalk located AT Pan American Avenue and 10<sup>th</sup> Street; and

**WHEREAS**, it is in the best interests of the City of Douglas to enter into this agreement.

**Section 1.** The terms of said Intergovernmental Agreement are in the best interest of the City of Douglas.

**Section 3.** The officers of the City Council and the City of Douglas are hereby authorized and directed to fulfill all obligations under the terms of the Intergovernmental Agreement.

**PASSED AND ADOPTED** by the Mayor and Council of the City of Douglas, Arizona, this 10th day of November, 2004.

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By Ray Borane  
Ray Borane, Mayor

Attest:

By Leticia G. Rodriguez  
Leticia G. Rodriguez, City Clerk

Approved as to Form:

Anita L. Sanchez  
Anita L. Sanchez, City Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-1487TRN (**JPA 04-098**), an Agreement between public agencies, i.e., The State of Arizona and The City of Douglas, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: January 12, 2005

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

Susan E. Davis  
Assistant Attorney General  
Transportation Section